

Message Text

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PAGE 01 USBERL 00008 01 OF 02 021721Z

40

ACTION EUR-12

INFO OCT-01 ISO-00 PM-04 L-03 NSC-05 CIAE-00 DODE-00

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FM USMISSION USBERLIN

TO AMEMBASSY BONN

INFO SECSTATE WASHDC 1834

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AMEMBASSY MOSCOW

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C O N F I D E N T I A L SECTION 1 OF 2 USBERLIN 0008

E.O. 11652: GDS

TAGS: PFOR, PGOV, WB, GW

SUBJECT: GENTLEMEN'S AGREEMENT REACHED ON VOTING
RIGHTS OF BERLIN BUNDESRAT DELEGATION

REFS: A) USBERLIN 1562, B) BONN 12633,
C) BONN 12676

1. SUMMARY: WE HAVE LEARNED THAT LAENDER HAVE REACHED
COMPROMISE UNDER WHICH BERLIN DELEGATION'S RIGHT TO
VOTE ON MOST IF NOT ALL BUNDESRAT RESOLUTIONS IS
RECOGNIZED AT SAME TIME AS LAENDER AGREE TO IMPLEMENT
"GENTLEMEN'S AGREEMENT" UNDER WHICH BUNDESRAT WILL NOT
PASS RESOLUTIONS THAT HAVE RESULT CONTRARY TO THAT
BODY'S SUBSTANTIVE VOTE ON A PIECE OF LEGISLATION. NET
RESULT, IF GENTLEMEN'S AGREEMENT IS IMPLEMENTED, WOULD
PROBABLY BE THAT CDU/CSU WOULD REFRAIN FROM ATTEMPTING
TO EMBARRASS GOVERNMENT BY INTRODUCING BUNDESRAT
RESOLUTIONS EXPRESSING OPPOSITION POINT OF VIEW AND THAT
BERLIN'S DESIRE TO PARTICIPATE AS FULLY AS POSSIBLE IN
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PAGE 02 USBERL 00008 01 OF 02 021721Z

BUSINESS OF BUNDESRAT WOULD RECEIVE MODEST SUPPORT BUT

IN WAY THAT WOULD NOT BE UNDULY HIGHLIGHTED AND WOULD THUS BE UNLIKELY TO PROVOKE SOVIET PROTEST. IT MIGHT BE DESIRABLE, HOWEVER, FOR BONN GROUP TO REQUEST FULLER BRIEFING ON DECISION AND ITS POSSIBLE IMPLICATIONS. END SUMMARY.

2. WE HAVE OBTAINED COPY OF BRIEF LETTER FROM BUNDESRAT PRESIDENT TO ALL MEMBERS OF THAT BODY DATED OCTOBER 31 (COPIES BEING POUCHED EMBASSY AND EUR/CE). LETTER NOTES THAT JUNE 20, 1975 MEETING OF BUNDESRAT PRESIDUM HAD FAILED TO REACH AGREEMENT ON QUESTION OF BERLIN DELEGATION'S RIGHT TO VOTE ON RESOLUTIONS. IT SAYS, HOWEVER, THAT INFORMAL DISCUSSIONS CONTINUED OUTSIDE PRESIDUM AND HAVE NOW BEEN CONCLUDED WITH FOLLOWING "DEFINITIVE" RULE: BEGIN TEXT: THERE IS AGREEMENT THAT BERLIN IS ENTITLED TO VOTE ON RESOLUTIONS DURING THE SECOND READING OF LAWS AND ON RESOLUTIONS INDEPENDENT OF A LAW UNDER CONSIDERATION. TO AVOID CONTRADICTORY DECISIONS, PRACTICAL ADMINISTRATION WILL BE CARRIED OUT IN ACCORDANCE WITH THE GENTLEMEN'S AGREEMENT OF ALL THE LAENDER: THE LAENDER WILL SUPPORT NO DRAFT RESOLUTION IF THIS RESOLUTION WOULD, BY ITS FACTUAL OR POLITICAL SUBSTANCE, LEAD TO A CONTRADICTION WITH DECISIONS TAKEN BY THE BUNDESRAT IN CURRENT OR CONCLUDED LEGISLATIVE PROCEEDINGS OR WITH AN ANTICIPATED DECISION ON A LAW UNDER CONSIDERATION. END TEXT.

3. WE HAVE BEEN ADVISED THAT SENAT CHANCELLORY HAS ALREADY BRIEFED SENAT ON THIS DECISION AND THAT IT IS REGARDED AS BOTH A CONFIRMATION OF POSITION ADVANCED BY SENATOR STOBBE IN BUNDESRAT LAST SPRING AND SUMMER AND AS AN INDICATION THAT POTENTIALLY CONTROVERSIAL POLITICALLY MOTIVATED OPPOSITION RESOLUTIONS WILL BE RARER IN FUTURE.

4. GIVEN PRESENT 21-20 DIVISION OF BUNDESRAT IN FAVOR OF CDU/CSU IF SAARLAND VOTES WITH OPPOSITION AND BERLIN'S FOUR VOTES ARE NOT COUNTED, WE WOULD EXPECT FOLLOWING EFFECT ON BUNDESRAT ACTIVITY:
A) CDU/CSU WILL CONTINUE TO BE ABLE TO BLOCK PASSAGE OF THOSE LAWS THAT REQUIRE BUNDESRAT CONSENT (I.E., LAWS
CONFIDENTIAL

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PAGE 03 USBERL 00008 01 OF 02 021721Z

THAT AMEND FRG BASIC LAW OR WHICH AFFECT DIVISION OF POWERS BETWEEN FEDERATION AND LAENDER IN AREAS WHERE BOTH SHARE COMPETENCE) BY IMPOSING VETO AT SECOND READING. IT WILL, HOWEVER, NOT BE ABLE TO SUPPLEMENT VETO WITH RESOLUTION SPELLING OUT ALTERNATIVE PROGRAM BECAUSE BERLIN'S SPD-FDP DELEGATION WOULD BE ABLE TO CAST VOTES TO DEFEAT RESOLUTION.
B) CDU/CSU WILL CONTINUE TO BE ABLE TO PUT BUNDESRAT

ON RECORD AS OPPOSING AT SECOND READING OTHER LAWS WHICH CAN IN ANY EVENT BE PASSED BY SIMPLE BUNDESTAG MAJORITY BECAUSE BUNDESRAT DOES NOT HAVE VETO. AGAIN, HOWEVER, OPPOSITION WOULD NOT BE ABLE TO SPELL OUT ALTERNATIVE PROGRAM WITH RESOLUTION BECAUSE BERLIN VOTES WOULD BE DECISIVE.

C) CDU/CSU WOULD NOT HAVE INCENTIVE TO ADVANCE POLICY RESOLUTIONS NOT RELATED TO LAWS, SUCH AS LAST SUMMER'S RESOLUTION ON CSCE, SINCE BERLIN COULD VOTE AND DEFEAT THEM.

D) SPD/FDP COALITION WOULD HAVE AT LEAST THEORETICAL TEMPTATION TO INTRODUCE POLICY RESOLUTIONS NOT RELATED TO LAWS BECAUSE BERLIN VOTES COULD GIVE THEM MAJORITY, BUT THERE WOULD SEEM TO BE LITTLE NEED FOR SUCH RESOLUTIONS SO LONG AS THOSE PARTIES CONTROL BUNDESTAG AND FEDERAL GOVERNEMENT.

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PAGE 01 USBERL 00008 02 OF 02 021731Z

42

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C O N F I D E N T I A L SECTION 2 OF 2 USBERLIN 0008

5. GENTLEMEN'S AGREEMENT WOULD SEEM, THEN, TO REDUCE TEMPTATION FOR OPPOSITION PARTIES TO ATTEMPT TO USE TECHNIQUE OF RESOLUTIONS TO SPELL OUT PROGRAMS CONTRARY

TO THOSE SUPPORTED BY BUNDESTAG MAJORITY. SINCE THESE ARE RESOLUTIONS ON WHICH BERLIN VOTES MIGHT BE DECISIVE, IT WOULD APPEAR LIKELY THAT THERE WILL BE FEW INSTANCES IN WHICH THIS ASPECT OF BERLIN VOTING RIGHTS QUESTION WOULD COME TO PUBLIC ATTENTION IN SPECTACULAR WAY. THIS WOULD GREATLY REDUCE ONE OF MAJOR CONCERNS THAT WE HAD INITIALLY EXPRESSED SINCE THERE WOULD THEN BE LESS PROSPECT THAT SOVIETS MIGHT RAISE QUESTION WHETHER PROCEDURE WAS CONSISTENT WITH ALLIED RESERVATION ON BERLIN VOTING RIGHTS. MAIN GAINER UNDER PROCEDURE IS PERHAPS GOVERNING COALITION WHICH APPEARS SOMEWHAT LESS LIKELY TO SUFFER EMBARRASSEMENT OF BUNDESRAT EXPOUNDING CONTRARY LEGISLATIVE PHILOSOPHY IN DETAIL (THOUGH OF COURSE OPPOSITION PARTIES WILL CONTINUE TO BE ABLE TO EXERCISE THEIR MAJORITY ON ACTUAL LEGISLATIVE VOTES). PRESUMABLY CDU/CSU HAD BEEN MOVED TO ADOPT THIS POSITION IN PART BECAUSE OF UNCERTAIN POSITION
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PAGE 02 USBERL 00008 02 OF 02 021731Z

IN SAARLAND IN PART BECAUSE OF DESIRE NOT TO HIGHLIGHT BERLIN VOTING RIGHTS IN MANNER THAT COULD LEAD TO COMPLICATIONS WITH ALLIES OR SOVIETS.

6. WHILE AN AT LEAST TEMPORARILY SATISFACTORY COMPROMISE WOULD SEEM TO HAVE BEEN REACHED, THERE REMAIN A NUMBER OF UNANSWERED QUESTIONS. ONE OF THESE IS WHETHER PARTIES WILL STICK TO GENTLEMEN'S AGREEMENT IN HEAT OF POLITICAL INFIGHTING PRIOR TO NEXT FALL'S GENERAL ELECTION. ANOTHER IS WHETHER GENTLEMEN'S AGREEMENT WILL HOLD AFTER 1976 ELECTION AND PARTICULARLY WHEN BALANCE OF POWER SHIFTS IN LAENDER AND THUS IN BUNDESRAT. WHEN SAARLAND QUESTION IS RESOLVED OR IF IN FUTURE BERLIN WERE STILL CONTROLLED BY SPD OR SPD/FDP COALITION WHICH HAD MAJORITY IN BUNDESRAT WHILE CDU/CSU CONTROLLER BUNDESTAG, THERE MIGHT BE NEW PRESSURES TO RESORT TO RESOLUTION TACTIC IN ORDER TO PUT BUNDESRAT MORE CLEARLY ON RECORD IN OPPOSITION TO FEDERAL GOVERNMENT'S POLICIES. IT MAY BE DESIRABLE, THEREFORE, FOR BONN GROUP TO REQUEST BRIEFING ON HOW IT IS ENVISAGED BUNDESRAT PRESIDUM'S DECISIONS TO BE IMPLEMENTED. SUCH A REQUEST WOULD ALSO DEMONSTRATE USEFULLY THAT ALLIES CONTINUE TO REGARD QUESTIONS OF BERLIN VOTING IN FRG LEGISLATIVE ORGANS AS MORE THAN PURELY INTERNAL MATTER OF THOSE ORGANS
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